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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-100324-14

Date:

May 20, 2014

Legend

Taxpayer

Trust A

Attorney

Accountant

Date 1

Date 2

Child 1

Child 2

Child 3

Trust 1

Trust 2

Trust 3

a

Year 1

Year 2

Year 3

Dear :

This letter responds to your authorized representative's letter dated December 18, 2013 requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to elect out of the generation-skipping transfer (GST) exemption automatic allocation rules with respect to certain transfers to four trusts.

The facts and representations submitted are summarized as follows:

On Date 1, a date after December 31, 2000, Taxpayer established a grantor retained

annuity trust, Trust A. Trust A had an a term. Upon the termination of Trust A, the assets of Trust A would be distributed to Trust 1, Trust 2, and Trust 3. Trust 1, Trust 2, and Trust 3, all irrevocable trusts, were also established by the Taxpayer on Date 1. On Date 1, Trusts 1-3 were each funded with \$a.

Trust 1, Trust 2, and Trust 3 each have identical terms, except that the beneficiaries are different. Trust 1 benefits Child 1. Trust 2 benefits Child 2. Trust 3 benefits Child 3. Each trust provides that the trustee has the sole discretion to distribute so much of the income of the trust to the child as is in the child's best interest. Each child has a testamentary limited power of appointment to appoint the trust assets to one or more persons, corporations, or organizations (other than the child, the child's estate, child's creditors, or the creditors of child's estate). In default of such appointment, the trust assets will be distributed to successor trusts benefiting child's descendants. If a child's has no living descendants, then the trust assets will be distributed to the other children, and if any of the other children as deceased, to that child's descendants. Trust 1, Trust 2, and Trust 3 have GST potential.

Taxpayer retained Attorney to draft Trust A and Trusts 1-3. Taxpayer retained Accountant to prepare and file a Form 709 (United States Gift (and Generation-Skipping Transfer) Tax Return) to report Taxpayer's gift for Year 1. However, Accountant failed to report the transfers to Trust A and Trusts 1-3 on the Form 709.

On Date 2, in Year 2, Trust A terminated and, pursuant to the terms of the trust, the assets of Trust A were distributed to Trusts 1-3. On Date 2, the estate tax inclusion period (ETIP) with respect to Taxpayer's transfer to Trust A closed for generation-skipping transfer (GST) tax purposes.

In Year 3, Accountant prepared and filed an amended Form 709 for Year 1. On Schedule A, Part 3 (Indirect Skips) of the amended Year 1 Form 709, Accountant reported the transfers to Trust A and Trusts 1-3 and, pursuant to § 2632(c)(5)(A)(ii), elected to treat Trusts 1-3 as GST Trusts with respect to the Year 1 transfers and all future transfers. On Schedule C, Part 2, Line 5, of the amended Year 1 Form 709, Accountant reported that Taxpayer's GST exemption was automatically allocated to the Year 1 transfers to Trust A and Trusts 1-3.

In Year 3, Taxpayer made additional gifts to Trusts 1-3. On Schedule A, Part 3 (Indirect Skips) of a timely filed Form 709, Accountant reported the Year 3 gifts. On Schedule C, Part 2, Line 5, of the Form 709, Accountant reported that Taxpayer's GST exemption was automatically allocated to these gifts. Subsequently, Accountant filed an amended Year 3 Form 709, reporting that Taxpayer is submitting a private letter ruling requesting an extension of time to elect out of the automatic allocation rules under § 2632(c).

In an affidavit, Taxpayer states that she and Attorney had discussed Taxpayer's GST exemption and Taxpayer decided not to allocate her GST exemption to Trusts 1-3.

Further, Taxpayer states that she never advised Accountant to allocate her GST exemption to Trust A or Trusts 1-3, that she was not aware of the automatic allocation rules and that she relied on Accountant to prepare the Forms 709. In an affidavit, Accountant stated that he was advised by Attorney not to allocate any of Taxpayer's GST exemption to Trust A and Trusts 1-3 and incorrectly made the GST trust election and incorrectly reported the automatic allocation of Taxpayer's GST exemption to Trust A and Trusts 1-3.

Taxpayer requests an extension of time under § 301.9100-3 to elect under § 2632(c)(5) not to have the automatic allocation rules contained in § 2632(c)(1) apply to the Year 1 transfers and all future transfers to Trust A and Trusts 1-3.

LAW & ANALYSIS

Section 2601 provides that a tax is imposed on every generation-skipping transfer (GST). Section 2611(a) provides that the term "generation-skipping transfer" means: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2602 provides that the amount of GST tax is the taxable amount multiplied by the applicable rate.

Section 2641(a) defines the applicable rate as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Section 2641(b) provides that the term "maximum Federal estate tax rate" means the maximum rate imposed by § 2001 on the estate of decedents dying at the time of the taxable distribution, taxable termination, or direct skip, as the case may be.

Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is the excess (if any) of 1 over the applicable fraction. The applicable fraction, as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of the GST exemption under § 2631 allocated to the trust (or to property transferred in a direct skip), and the denominator of which is the value of the property transferred to the trust or involved in the direct skip, reduced by the sum of any federal estate tax or state death tax actually recovered from the trust attributable to such property, and any charitable deduction allowed under § 2055 or 2522 with respect to such property.

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2631(c) provides that, for purposes of § 2631(a), the GST exemption amount for any calendar year shall be equal to the applicable exclusion amount under § 2010(c) for such calendar year.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 2632(c)(1) provides that if any individual makes an indirect skip during such individual's lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the indirect skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

Section 2632(c)(3)(A) provides that for purposes of this subsection, the term "indirect skip" means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 made to a GST trust. Section 2632(c)(3)(B) provides, in part, that the term "GST trust" means a trust that could have a generation-skipping transfer with respect to the transferor unless the exceptions enumerated in (i) through (vi) apply.

Section 2632(c)(4) provides that, for purposes of § 2632(c), an indirect skip to which § 2642(f) applies shall be deemed to have been made only at the close of the ETIP and the fair market value of such transfer shall be the fair market value of the trust property at the close of the ETIP.

Section 2632(c)(5)(A)(i)(II) provides that an individual may elect to have § 2632(c) not apply to any or all transfers made by such individual to a particular trust. Section 2632(c)(5)(B)(ii) provides that an election under § 2632(c)(5)(A)(i)(II) may be made on a timely filed gift tax return for the calendar year for which the election is to become effective.

Section 2642(f)(1) provides that, for purposes of determining the inclusion ratio, when an individual makes an inter vivos transfer of property and the value of the property would be includible in the individual's gross estate under chapter 11 if the individual died immediately after making the transfer (other than by reason of § 2035), any allocation of GST exemption to the property shall not be made before the close of the ETIP.

Section 26.2632-1(b)(2)(iii)(A) of the Generation-Skipping Transfer Tax Regulations provides that a transferor may prevent the automatic allocation of GST exemption (elect out) with respect to: (1) one or more prior-year transfers subject to § 2642(f) (regarding ETIPs) made by the transferor to a specified trust or trusts; (2) one or more (or all) current-year transfers made by the transferor to a specified trust or trusts; (3) one or more (or all) future transfers made by the transferor to a specified trust or trusts; (4) all future transfers made by the transferor to all trusts (whether or not in existence at the time of the election out); or (5)

any combination of paragraphs (b)(2)(ii)(A)(1) through (4) of this section.

Section 26.2632-1(b)(2)(iii)(B) provides that to elect out, the transferor must attach an election out statement to a Form 709 filed within the time period provided in § 26.2632-1(b)(2)(iii)(C). In general, the election out statement must identify the trust, and specifically must provide that the transferor is electing out of the automatic allocation of GST exemption with respect to the described transfer or transfers. Prior-year transfers that are subject to § 2642(f), and to which the election out is to apply, must be specifically described or otherwise identified in the election out statement. Under § 26.2632-1(b)(2)(iii)(C), to elect out, the Form 709 with the attached election out statement must be filed on or before the due date for timely filing the Form 709 for the calendar year in which: (1) for a transfer subject to § 2642(f), the ETIP closes; or (2) for all other elections out, the first transfer to be covered by the election out was made.

Section 26.2632-1(b)(3)(iii) provides that a GST trust election will cause all transfers made by the electing transferor to the trust subject to the election to be deemed to be made to a GST trust as defined in § 2632(c)(3)(B). Thus, the electing transferor's unused GST exemption may be allocated automatically to such transfers. A transferor may prevent the automatic allocation of GST exemption to future transfers to the trust either by terminating the GST trust election or by electing out of the automatic allocation of GST exemption in accordance with § 26.2632-1(b)(2).

Section 2642(g)(1)(A) provides, generally, that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under § 2642(g)(1), the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that, under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a generation-skipping transfer trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-1(a).

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-3(a) provides, in part, that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1) provides, in part, except as provided in § 301.9100-(b)(3)(i) through (iii), that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based upon the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Taxpayer is granted an extension of time of 120 days from the date of this letter to elect out of the automatic allocation rules under § 2632(c)(5) for all transfers by Taxpayer during Year 1 and all future years to Trust A, Trust 1, Trust 2, and Trust 3.

The elections should be made on a Supplemental Forms 709. The Supplemental Forms 709 should be filed with the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center - Stop 82, Cincinnati, OH 45999. You should attach a copy of this letter to the Supplemental Forms 709. We have enclosed a copy for this purpose.

In accordance with the Power of Attorney on file with this office, we have sent a copy of this letter to your authorized representatives.

Except as expressly provided herein, we neither express nor imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the Taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Associate Chief Counsel
Passthroughs & Special Industries

By: Lorraine E. Gardner
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

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cc: